Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 88-2020

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

OTIS HINDMAN,
Petitioner

v.

THE CITY OF PARIS, *et al.*,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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SUPPLEMENTAL APPENDIX

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CORRECTED STATEMENT OF OPINION BELOW

Petitioner's statement on Page 1 of his brief that no opinion was rendered by the District Court in Hindman II is incorrect. A copy of such opinion is being included in the Supplemental Appendix.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

Civil Action No. P-78-17-CA

OTIS HINDMAN

v.

ANDREW SMITH, CHARLES G. WHITLEY,
and CITY OF PARIS

MEMORANDUM OPINION

[Filed March 1, 1988]

Under consideration are plaintiff's motion for judgment, the motion of defendants Smith and Whitley for judgment, and the motions of the City of Paris for judgment and for judgment notwithstanding the verdict. After careful consideration, it is the opinion of the Court that the plaintiff presented evidence insufficient to create a jury question on the threshold fact issue in the case, whether Officers Whitley and Smith intentionally or recklessly misled the Justice of the Peace into believing that the affidavit referred to only one informant, and, therefore, judgment in favor of the defendants is appropriate.

I.

This case was tried upon remand, and the panel opinion adequately and fairly sets out the facts upon which this suit is based. *Hindman v. City of Paris*, 746 F.2d 1063 (5th Cir. 1984). At the trial of this case after remand, the plaintiff presented his case and rested. The defend-

ants moved for directed verdicts. The Court overruled the motions at that time. The defendants rested without presenting evidence. Plaintiff moved to reopen. The Court overruled the motion. All parties closed. The defendants moved for instructed verdicts. The motions were again overruled.

Eight interrogatories were submitted to the jury. Based upon its answers to these interrogatories, the jury found (1) that the warrant for plaintiff's arrest was issued without probable cause, which was a proximate cause of damages to plaintiff; (2) that the officers did not intentionally or recklessly mislead the Justice of the Peace into believing that the affidavit used to secure the search and arrest warrant referred to only one confidential informant; (3) that the City of Paris had an official policy of securing warrants of arrest without a showing of probable cause through the device of applying for a search warrant with an arrest warrant incidentally included therein, which was a proximate cause of damages to plaintiff; and (4) that plaintiff is entitled to damages of Thirty Thousand Dollars ($30,000).

II.

The standard for granting a judgment notwithstanding the verdict is identical to the standard for granting a directed verdict, and is firmly established in this circuit:

> On motions for directed verdict and for judgment notwithstanding the verdict the Court should consider all of the evidence . . . in the light and with all reasonable inferences most favorable to the party opposed to the motion. If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of the motions is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable

> and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury. A mere scintilla of evidence is insufficient to present a question for the jury. The motions for directed verdict and judgment n.o.v. should not be decided by which side has the better of the case, nor should they be granted only when there is a complete absence of probative facts to support a jury verdict. There must be a conflict in substantial evidence to create a jury question.

Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc). Consequently, if there is insufficient evidence to create a jury issue on the only legally valid fact question, a judgment notwithstanding the verdict is appropriate even though a jury has returned a verdict based upon an erroneous or unnecessary submission. *See, Kendrick v. Illinois Central Gulf Railroad Co.*, 669 F.2d 341, 343 (5th Cir. 1982). Bearing this in mind, to the extent the motions under consideration request a reconsideration of defendants' motions for directed verdicts, they shall be so construed.

III.

This Court believes that the opinion of the panel remanding this case mandates one threshold fact question, which, if not answered in favor of the plaintiff, is determinative as to all defendants:

> Has the plaintiff proved by a preponderance of the evidence that Officers Smith and Whitley intentionally or recklessly misled the Justice of the Peace into believing that the affidavit referred to only one confidential informant?

Hindman, 746 at 1068 n. 2.

It is the further opinion of the Court that plaintiff failed to produce evidence sufficient to present this ques-

tion to a jury. Plaintiff called neither defendant Smith nor defendant Whitley. Neither did plaintiff call E. G. Hardy, the purported informant, nor the Justice of the Peace who issued the warrant. The only testimony relevant to the issue of whether the officers recklessly misled the Justice of the Peace was elicited from Thomas Wells, the Lamar County Attorney who prepared the affidavit, who testified that he made no factual inquiry of the officers as to the informant or informants to which the affidavit referred. This evidence is simply insufficient to justify the submission of the issue suggested by the appellate court.

Accordingly, judgment for the defendants has been entered separately and simultaneously of even date herewith.

Signed this 1st day of March, 1988.

/s/ Paul Brown
United States District Judge

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FINAL JUDGMENT

For the reasons expressed in the Memorandum Opinion entered of even date herewith, it is hereby ORDERED, ADJUDGED and DECREED that plaintiff's claims be, and the same are hereby, DISMISSED with prejudice, and defendants shall recover from plaintiff their costs of action.

Signed this 1st day of March, 1988.

/s/ Paul Brown
United States District Judge